

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X **Case No. 21-41642-ESS**

OLMEDO PALAGUACHI

Debtor

-----X

NOTICE OF MOTION TO STRIKE MILKY WAY II LLC 'S

PROOF OF CLAIM 4-1 & THE AMENDED PROOF OF CLAIM 4- 2

PLEASE TAKE NOTICE that, upon the accompanying Memorandum of Law, dated April 10, 2022 by counsel for the debtor, and all exhibits and attachments thereto, the debtor, Olmedo Palaguachi hereby moves the United States Bankruptcy Court, before the Honorable Elizabeth S. Stong, United States Bankruptcy Court Judge, at 271-C Cadman Plaza, Courtroom 1595, Brooklyn, New York 11201, pursuant to Rule 3007 of the Federal Rules of Bankruptcy Procedure, section 502 of Bankruptcy Code, for an order striking claim of Milky Way II LLC (Milky)'s Proof of Claim (Claim 4-1, 2) of \$639,240.11 filed after the deadline for filing of claims and granting such relief in his favor and against Milky Way any such further relief this Court deems just and proper.

A hearing has been scheduled regarding the foregoing requisitioned relief before the said Court on May 24, 2022, at 10:30 am. All responses be filed at least seven days (7) in advance of the scheduled hearing.

Dated: April 10, 2022
New York New York

/s/karamvirdahiya
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Affirmation in support of Motion to Strike the Claim of Milky Way II LLC

The debtor Olmedo Palaguachi through the undersigned counsel respectfully submit the following for striking claim of Milky Way LLC

1. On September 15, 2021, Milky Way LLC (Milky) filed “secured claim” a Proof of Claim (POC) \$639,240.11 (POC) with the claim register, marked as claim no. 4-2. Ex. A.
2. The deadline to file the claim was September 1, 2021. Milky did not file the POC in time. It is time barred.
3. The debtor sought bankruptcy protection on June 23, 2021. Milky was listed as a creditor. Milky was involved in the state court litigation. A Notice of the same was filed with the state court. Milk Way had the same attorney, M. Zimmerman appearing the state court. He was notified through the state court system also.
4. No motion was made, or permission sought to file the POC. Section 502(b)(9) of the Bankruptcy Code provides for disallowance of a claim if “proof of such claim is not timely filed.”

Indeed,

The time for filing claims fixed by rule 3002(c) works like a statute of limitations in that a claim filed thereafter will not ... entitle its holder to receive distributions from the estate....Courts have uniformly held that no extension of the time fixed by Rule 3002(c) may be granted after the time has passed.... The court has

no equitable power to extend the time fixed by Rule 3002(c). The excusable neglect standard provided by rule 9006(b) does not permit the court to extend the time for filing proofs of claim under Rule 3002(c).

9 *Collier on Bankruptcy* ¶ 3002.03[1] (15th ed.2003).

Wherefore, it is respectfully requested that the Milky Way II LLC both claims original and amended be expunged from the claim registry and it be disallowed.

Dated: New York New York
April 10, 2022

/s/*karamvirdahiya*
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